

You're Selling Your Company

What Insurance Should You Require the Buyer to Carry?

By Jeff Cavignac, CPCU, RPLU, ARM, MLIS

Selling your company is a big deal. You have worked a good portion of your life to build your organization and it's hard to give it up. Regardless, you are being paid a fair price and you are looking forward to putting this part of your life behind you. But what happens if the buyer falls on hard times, and can't respond to liabilities that arise? Not only can't they pay you the balance of what they owe you, but you find out they didn't have the appropriate insurance to protect you to begin with!

It's important to make certain the liabilities arising out of the sale of your company are clearly understood by each party and that appropriate insurance is in place. This should be addressed in the Buy/Sell Agreement.

There is a distinction between an *asset* purchase and a *stock* purchase and this will likely determine who is responsible for what. A stock purchase includes both the assets and the liabilities. In these situations, the seller is going to want to make certain that they are protected from liability arising out of pre-sale activities. Since the buyer now has responsibility for those liabilities, the buyer will generally insure them. Shown below is sample insurance wording the seller might require of the buyer:

Buyer will keep in force the following policies so long as Buyer remains in business:



Commercial General Liability (CGL) Insurance with a limit of not less than \$X million each occurrence and a \$2XM aggregate limit. CGL insurance shall be written on the current version of the ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises operations, independent contractors, products/completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

Seller shall be included as an 'additional' insured under the CGL, using current versions of ISO additional insured endorsements CG 20 10 and CG 20 37 (completed operations) or their equivalents. Additional insured coverage as required in this subparagraph shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to Seller. A copy of the Additional Insured endorsement will be submitted with the Certificate of Insurance.

Cross Liability Coverage - If Buyer's Liability Policy does not contain standard ISO separation of insured's condition or substantially similar clause, there shall be an endorsement to provide cross liability.

Business Automobile Liability Insurance - Buyer shall maintain Business Automobile Liability insurance with a limit of not less than \$X million each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos), and shall be written on the current version of ISO form CA 00 01, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

Workers Compensation and Employers Liability Insurance - Buyer shall maintain Workers Compensation and Employers Liability insurance as required by statute. Employers Liability limits shall not be less than \$X million for bodily injury by accident or disease.

Excess Liability Insurance - Buyer shall maintain an excess liability policy which extends over the Commercial General Liability, Auto Liability and Employers Liability coverages in an amount of \$XM per occurrence.

Professional Liability Insurance - (IF APPLICABLE)
Buyer shall assume responsibility for the prior acts errors or omissions of Seller. Buyer will maintain Professional Liability Insurance in an amount not less than \$XM per claim and \$2XM aggregate. Buyer will make certain that the retroactive date on their policy will be the same as, or precede, the retroactive date on the Seller's policy. The retroactive date on Seller's policy is XX/XXXXXX. The retroactive date for Seller's prior acts will not be advanced under any circumstances.

Prior to close of escrow, Seller will notice their existing insurance company of any claims that have yet to be reported or circumstances that they feel could give rise to a claim. Insurance will be maintained in force for so long as the company operates.

Whether you are selling, buying or merging, insurance is a critical component to any deal. Cavignac & Associates previously published a newsletter on the Insurance Ramifications of Mergers & Acquisitions which you can access by clicking on the newsletter at right.



Click on Newsletter above for pdf

In the event Buyer decides to cease operating the business or if Buyer sells the business to a third party, then Buyer shall purchase an extended reporting period endorsement which extends coverage for 10 years after the date of dissolution or sale. The retroactive date for both Seller and Buyers prior acts will not under any circumstances be advanced.

Directors and Officers Liability and Employment Practices Liability Insurance in an amount of \$XM per claim and aggregate will be maintained in force for so long as the company operates. This will cover Seller's exposure from the date of acquisition forward. Seller is responsible for purchasing an Extended Reporting Endorsement from their existing Directors and Officers Liability Insurance Company for the period of time they feel is appropriate. In the event Buyer decides to cease operating the business or if Buyer sells the business to a third party, then Buyer shall purchase an extended reporting period endorsement which extends coverage for 3 years after the date of dissolution or sale.

Cyber Insurance in an amount of \$XM per claim and aggregate will be maintained in force for so long as the company operates. In the event Buyer decides to cease operating the business or if Buyer sells the business to a third party, then Buyer shall purchase an extended reporting period endorsement which extends coverage for 3 years after the date of dissolution or sale.

Best's Rating - All coverages required above will be placed with insurance companies licensed to do business in the State of California with a minimum A.M. Best rating of A- VIII. A specific exception to this requirement will be the State Compensation Insurance Fund of California.

Evidence of Insurance - Prior to commencing the work, Buyer shall furnish Seller with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above. When requested by Seller, Buyer shall furnish copies of policies for each coverage required.

Cancellation of Insurance - If the insurance company elects to cancel or non-renew coverage for any reason other than nonpayment of premium, Buyer's insurer or insurer's representative will provide 30 days' notice of such cancellation or nonrenewal.

No Representation of Coverage Adequacy - By requiring insurance herein, Seller does not represent that coverage and limits will necessarily be adequate to protect Buyer, and such coverage and limits shall not be deemed as a limitation of Buyer's liability.

One additional coverage that should be considered is what is known as Reps and Warranties Insurance (RWI). RWI protects the insured against the unintentional and unknown breaches of a seller's representations and warranties. The benefit of RWI is that it allows the parties to shift potential liabilities for unintentional and unknown breaches of specific (or blanket) reps and warranties from the parties to an insurance company for a fixed price. The cost generally ranges from 2-8% of each dollar insured. RWI is a unique coverage which is heavily underwritten. Generally there is an "Underwriting Fee" of 15-20,000 or more just to get a quote. If coverage is written the fee is applied against the cost. Due to the complexity of the coverage we won't go in to further detail in this newsletter, but you should be aware the coverage ex-

2018 Risk Management Seminar Series

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ists and evaluate whether or not it is worth considering based on the specific characteristics of your deal.

The limits of coverage required for each coverage will be specific to each transaction. The length of the Extended Reporting Period for claims made policies may also vary. Generally, we recommend coverage through applicable statutes, however, this is negotiable.

Final Comments

Selling a company is complex, while insuring the transaction correctly is an important element of any successful deal, involvement of an experienced Mergers and Acquisitions attorney should not be overlooked. Recognize that we are not lawyers and only provide contractual wording from a risk management and insurance perspective.■

Health and wellness tips for your work and life—
presented by Cavignac & Associates

Trouble Sleeping? Your Phone May Be to Blame

Yes, you read that headline right. According to a new [study](#), using your phone before you go to bed can disrupt your sleep schedule and prevent you from getting a good night's sleep.

Specifically, the study found that those who use smartphones or tablets before bed went to bed later and had a later sleep onset than those who didn't. The study also found that those who used their phone or tablet before going to sleep had lower levels of the sleep-regulating hormone, melatonin. Lastly, the study found that electronic device usage before bed reduced the period of rapid eye movement (REM) sleep, a vital component in our sleep patterns.

So, if you're having trouble sleeping, try putting your phone or tablet away before heading to bed.

Sunrays Aren't the Only Thing You Can Catch at the Pool

As the temperature climbs, many Americans will flock to the pool to find some relief from the heat. While the cool waters can be refreshing, they could also be contaminated with bacteria that can make you sick. Read on to learn about the three most common illnesses you can catch from spending a day at the pool.

Cryptosporidium (Crypto for Short)

Crypto, a chlorine-resistant parasite, is one of the most common culprits for post-pool day illness and causes diarrhea, stomach pain and nausea. Unfortunately, symptoms can last for up to two weeks.

To avoid getting sick, don't swallow pool water or touch your face until you've showered with soap and hot water.

Pinkeye

Between the chemicals and other people's bodily fluids in the pool, it shouldn't be a surprise that you can catch pinkeye from swimming in a shared pool or hot tub.

To avoid getting this infection, wear well-fitted goggles every time you get into the water.

Hot Tub Rash

The warm water in hot tubs causes chlorine to break down quickly, making the chemical ineffective in killing the germ that causes an itchy skin infection that can lead to a bumpy, red rash.

To avoid getting this rash, shower immediately after going into the hot tub and be sure to wash your swimming suit before wearing it again.

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Spinach Power Salad with Mandarin Vinaigrette

Dressing

6 ounces mandarin orange juice (reserve oranges)
2 Tbsp. apple cider vinegar
 $\frac{1}{4}$ cup olive oil
 $\frac{1}{4}$ cup pure cane sugar
 $\frac{1}{2}$ small onion (chopped)
1 Tbsp. spicy brown mustard
1 Tbsp. yellow mustard
 $\frac{1}{2}$ tsp. salt
 $\frac{1}{2}$ tsp. pepper

Salad

$\frac{1}{2}$ pound chicken breast (cooked, chopped)
5 ounces baby spinach
1 large carrot (shredded)
24 seedless red grapes
1 $\frac{1}{2}$ ounces walnuts (coarsely chopped)
Reserved mandarin oranges

PREPARATIONS

1. Combine all of the dressing ingredients in a blender. Mix until combined.
2. Divide the spinach among four bowls. Top each bowl with the shredded carrots, grapes, mandarin oranges, walnuts and chicken breast.
3. Shake the dressing. Drizzle over each salad.

Makes: 4 servings

Nutritional Information (per serving)

Total Calories	362
Total Fat	22 g
Protein	16 g
Carbohydrates	27 g
Dietary Fiber	3 g
Saturated Fat	3 g
Sodium	488 mg
Total Sugars	22 g

Source: USDA

Are You Up to Date On Your Immunizations?

Every August, the National Public Health Information Coalition sponsors National Immunization Awareness Month to promote the importance of immunizations at all life stages. Vaccination protects everyone, from infants to the elderly, from serious illnesses and complications of vaccine-preventable diseases.

Being properly vaccinated not only protects you, but everyone else around you, from falling ill with serious illnesses like measles, polio, hepatitis and meningococcal meningitis.

Follow the provided links to learn if you and your loved ones are up to date on the recommended vaccinations for each stage of life:

- [Infants and children \(birth to age 6\)](#)
- [Preteens and teens \(ages 7-18\)](#)
- [Adults \(ages 19 and older\)](#)
- [Pregnancy and vaccines](#)

For more information on vaccines, or to learn more about what vaccines you may need, click [here](#) or talk with your doctor.

KNOW YOUR VACCINES

Learn the differences between types of vaccines:

1. **Live attenuated vaccine** – These vaccines use a weakened virus strain to produce an asymptomatic infection in your body to produce a lifelong immunity to the illness.
2. **Inactivated vaccine** – These vaccines use “killed” strains of a bacterial or viral strain to evoke an immune response in your body.
3. **Subunit/conjugate vaccine** – These types of vaccines isolate a specific protein or carbohydrate within a virus or bacteria strain to evoke an immune response in your body.



Source: History of Vaccines, U.S. Centers for Disease Control and Prevention



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